

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERIC WISE,

Plaintiff,

v.

BRETT REYNOLDS,

Defendant.

ORDER

07-cv-316-jcs

Because Judge Shabaz will be convalescing from shoulder surgery for an extended period, I have assumed administration of the cases previously assigned to him, including this one, in which plaintiff appears to be asking the court to waive his obligation to pay one of two fees he owes for filing two appeals.

The record shows that judgment was first entered in this action on November 8, 2007, following entry of an order dated November 6, 2007, in which Judge Shabaz denied plaintiff's motion for a continuance of trial and dismissed the case without prejudice to reopening it after plaintiff had filed a response to defendant's motion for summary judgment or the expiration of three weeks, whichever comes first. Instead of filing a response to defendant's motion, plaintiff waited nearly a month, until December 3, 2007, when he filed

a notice of appeal from the November 8 judgment (court of appeals case no. 07-3938). In addition, he moved to reopen the case in this court. On December 5, 2007, Judge Shabaz granted the motion to reopen and two days later, he denied plaintiff's request for leave to proceed in forma pauperis on appeal on the ground that the appeal was premature. On January 22, 2008, the court of appeals dismissed plaintiff's premature appeal and directed him to pay the \$455 filing fee for appeal no. 07-3938.

Meanwhile, plaintiff's case progressed in Judge Shabaz's court. On December 21, 2007, Judge Shabaz granted defendant's motion for summary judgment and entered judgment in favor of defendant. On January 4, 2008, Judge Shabaz denied plaintiff's motion to alter or amend judgment. Thereafter, on January 14, 2008, plaintiff filed his second notice of appeal in the case (court of appeals case no. 08-1113), together with a request for leave to proceed in forma pauperis on appeal. Judge Shabaz denied plaintiff's request and, on May 19, 2008, the court of appeals dismissed plaintiff's appeal and directed that he pay the \$455 filing fee for filing appeal no. 08-1113.

Now plaintiff has filed a letter dated May 20, 2008, complaining that he is being billed twice for the same appeal. I construe the letter to include a motion for waiver of one of the appeal filing fees. That motion will be denied.

It is not clear why plaintiff believes that he is being billed twice for the same appeal. He filed *two* appeals in this case, one in December 2007 and another in January 2008. The

obligation to pay the fee attached at the time each appeal was file. Neither obligation can be waived. Payment for filing an appeal is explicitly required by statute to be collected, 28 U.S.C. § 1915(b)(1). Therefore, this court has no authority to grant plaintiff's motion for a waiver of his obligation to pay.

ORDER

IT IS ORDERED that plaintiff's motion to waive the \$455.00 fee for filing one of his two appeals in this case is DENIED.

Entered this 30th day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge